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Office of Legislative Counsel

25 April 1978

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

We have continued our review of the Civil Service Reform Bill (H.R. 11280). Based on this study, we are submitting this letter as an addendum to our letter of 20 March 1978 on the Civil Service Reform Bill, to replace paragraphs 1 and 2 of the previous letter.

In Title II, the CIA is explicitly exempted only from Chapter 43, "Performance Appraisal," and from Subchapter I of Chapter 75 relating to short-term suspension (subsections 203(a) and 204(a) of the bill, which would amend Title 5, United States Code). Subchapter II of Chapter 75 involves removal or suspension for more than 30 days (sections 7511-7514) and covers among other things employees in the competitive service. 50 U.S.C. 403j is the authority for the excepted personnel status of the Agency and has been consistently interpreted as exempting the Agency from all laws regarding preference eligibles. The Agency would then be exempted from the proposed subchapter II. Since H.R. 11280 is intended to be a comprehensive codification of Federal civil personnel systems, including the status of exempted agencies, we believe the legislation should include an explicit recognition of the relationship of the CIA to laws affecting preference eligibles. We therefore recommend that the CIA be explicitly exempted from Subchapter II of Chapter 75.

Also in Title II, Chapter 77, "Appeals," would present no conflict for the CIA if the Agency were completely exempted from the provisions of the bill. Under present laws, the Agency is exempt from various statutes which give the Civil Service Commission its adjudication and appeals authority and its authority to promulgate rules and regulations. The adjudication and appeals authority of the CSC would be passed, as is, from the CSC to the new Merit Board pursuant to a Presidential reorganization. However, since the proposed legislation gives new rights of appeal to the Merit Board, we require an exemption from each title of the bill.

Regarding Title IV, the Senior Executive Service, the only exemption provided the CIA is unacceptable. As this title is drafted, the CIA would have to seek exemption under the general exemption provisions of section 3132(c). This subsection would require CIA to make a presentation to the Office of Personnel Management, in support of the Agency's request for exemption. Moreover, OPM is given the authority to conduct any independent investigation it deems appropriate before it makes its recommendation to the President on whether the Agency should be exempted from the Senior Executive Service.

Finally, OPM is given the authority to recommend the revocation of a section 3132(c) exemption at any time. The prominent role to be played by OPM in the process of allocating and policing section 3132(c) exemptions would necessarily require detailed examination by that Office of the personnel systems exempted or seeking exemption under section 3132(c).

CIA must be specifically by name exempted from Title IV, as well as from the other titles of the bill, in order to preserve the secrecy and security required by the Agency's mission and functions. Though the drafters of the bill decided that the CIA did not need a specific exemption from Title IV since the Agency could be exempted under section 3132(c), the detailed examination of the Agency's personnel system that would result from having to obtain a section 3132(c) exemption would itself defeat the entire purpose behind the CIA receiving an exemption in the first place. In short, we regard a section 3132(c) exemption as tantamount to no exemption at all.

The language which apparently is intended to exempt the CIA from Title VI, Research, Demonstration and Other Programs, is not drawn as clearly as we believe necessary. In our view, every effort should be made to provide the clearest possible provisions concerning the scope of this legislation. We therefore propose that CIA be exempted from Title VI specifically by name rather than by reference.

As we have noted before, the intent was to exclude from coverage the CIA and the other entities of the Intelligence Community. However, there are provisions in the bill which require modification in order to reflect fully this intent. Furthermore, because this legislation is so complex and comprehensive, and because of the Agency's unique personnel requirements, the exemptions covering the CIA should be clearly drawn and written. In our view, every effort should be made to provide the clearest provisions possible concerning the scope of this important legislation.

Sincerely,



Acting Legislative Counsel

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